IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 2053 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 27/01/2004 in WPMP No. 26784 of 2003 and WVMP No. 4074 of 2003 in W.P. NO : 21445 OF 2003 on the file of the High Court.)

Between:

A.P. State Financial Corporation, Opp: Birla Guest House B-Camp, Kurnool-518001, Kurnool Town, Mandal and District rep., by its Assistant General Manager.

..... APPELLANT

AND

1 Lakshmi Devi Complex, Kurnool rep., by its Partners
B. Bramheswar Reddy
2 Lakshmi Devi Complex, Kurnool rep., by its Partners
B. Lakshmi Devi.

.....RESPONDENT(S)

Counsel for the Appellant:MR.Y.N.LOHITA

Counsel for the Respondent Nos.1 and 2: MR.V.SURYANARAYANA CHARI

The Court made the following Oral Judgment: (per Sri Devinder Gupta, CJ)

The writ appeal is taken up today for hearing. Name of the respondent counsel was duly printed in the cause list. Nobody has put in appearance on behalf of the respondent. Papers are also served on the respondent counsel. Accordingly, we have heard the learned counsel for the appellant.

Appeal is against the order passed in W.P.M.P. No. 26784 of 2003 and W.V.M.P. No. 4074 of 2003 in Writ Petition No. 21455 of 2003. The writ petition has been filed by the respondent herein questioning the action of the appellant in not considering its request for “One time settlement”. It also prayed for suspending the proceedings No. AFC/KNL/MR&R/GTR/DC/2002-03/5654, dated 13.3.2003 pending consideration of the “One Time Settlement”.

Initially, learned single judge granted interim order on the respondent depositing Rs.3,00,000/- (Rupees Three Lakhs Only). But, when vacate petition was filed by the appellant, learned single judge proceeded to confirm the order saying that the questions involved in the writ petition have ultimately to be decided on merits in

accordance with law and equities have already been taken care of.

Admittedly, the respondent is a loanee and has committed default in repayment of the instalments. The request of the respondent for “One Time Settlement” was not considered by the appellant. Such consideration is not a matter of right, but a matter of discretion. Prima facie, there is nothing on record to suggest that non-consideration of the request of the respondent is arbitrary or illegal. Appellant has been really justified in filing the vacate application. But, the respondent is not entitled for “One Time Settlement since he has committed default in payment of the loan amount.

In that view of the matter, there is absolutely no prima facie case or balance of convenience in continuing the interim order confirming the stay which was granted earlier. These aspects ought to have been considered by the learned single judge while confirming the interim order. Being defaulter and loanee, ultimately, in case the respondent loses the writ petition, the amount deposited can be directed to be adjusted. But, there cannot be any stay for recovery of the amount. The order passed by the learned single judge is bad in law and is liable to be seta side.

The writ appeal is accordingly allowed. The impugned order is set aside. WPMP No. 26784 of 2003 is dismissed. W.V.M.P. No. 4074 of 2003 is allowed. The interim order dated 1.10.2003 is vacated.

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DEVINDER GUPTA, CJ

Date: 28th December, 2004

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M. NARAYANA REDDY,J

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1. Two C.D.copies